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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,504	01/30/2001	Gee-Kung Chang	APP 1349-US	9180
8156	7590	08/09/2005	EXAMINER	
JOHN P. O'BANION O'BANION & RITCHEY LLP 400 CAPITOL MALL SUITE 1550 SACRAMENTO, CA 95814			LEUNG, CHRISTINA Y	
			ART UNIT	PAPER NUMBER
			2633	

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



<b>Office Action Summary</b>	<b>Application No.</b> 09/772,504	<b>Applicant(s)</b> CHANG ET AL.	
	<b>Examiner</b> Christina Y. Leung	<b>Art Unit</b> 2633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22 is/are allowed.
- 6) ☒ Claim(s) 1-18 and 21 is/are rejected.
- 7) ☒ Claim(s) 19 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |



## **DETAILED ACTION**

### ***Terminal Disclaimer***

1. The terminal disclaimer filed on 14 March 2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,757,495 B2, US 6,757,496 B2, US 6,760,549 B2, US 6,819,666 B2, US 6,757,497 B2, and 6,754,450 B2 has been reviewed and is accepted. The terminal disclaimer has been recorded. However, Examiner respectfully notes that some claims in the application are further rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims in U.S. Patent No. 6,766,114 B1 as discussed below in this Office Action.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).



Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 9, 17, and 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 22, 23, and 24 respectively of U.S. Patent No. 6,766,114 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 9, 17, and 18 of the present application each recite the same elements as claims 1, 22, 23, and 24 of the patent except claims 1, 22, 23, and 24 of the patent further includes “a label switch controller” and “a switching device...controlled by the label-switching controller.” However, other routing protocols that are not based on label-switching protocols are well known in the art, Given claims 1, 22, 23, and 24 of the patent, it would have been obvious to a person of ordinary skill in the art to remove the label switch controller so that the system for multicasting a data payload can be used with other routing protocols.

Claims 17 and 18 additionally differ slightly from claims 23 and 24 respectively of the patent in that claims 17 and 18 recite a “plurality” or “two” headers while claims 23 and 24 recite “a” (one) header. However, it is well understood in the art that data payloads may include a variety of overhead information (such as for routing and identification of the data). Given claims 23 and 24 of the patent, it would have been obvious to a person of ordinary skill in the art to further include more than one header with the data payload to convey various types of information pertaining to one payload.



Therefore, claims 1, 9, 17, and 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 22, 23, and 24 respectively of U.S. Patent No. 6,766,114 B1.

4. Claims 2-6 and 10-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17-21 of U.S. Patent No. 6,766,114 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because dependent claims 2-7 and 10-14 generally recite the same features and limitations recited by dependent claims 17-21 of the patent and are therefore rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17-21 of the patent for the reasons discussed above with respect to parent claim 1 of the present application.

Examiner notes that claims 10-14 of the present application depend on claim 9, while claims 17-21 depend on claim 1 of the patent. However, claim 9 of the present application differs from claim 1 of the present application in that claim 9 recites "a plurality" of headers, switch control signals, and local routes in the claim while claim 1 recites "two" such headers, switch control signals, and local routes. Since a "plurality" of each item could include "two" of each, claim 9 of the present application is also not patentably distinct from claim 1 of the patent for the reasons given for claim 1 of the present application.

5. Claims 7 and 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 9 of U.S. Patent No. 6,766,114 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because dependent claims 7 and 15 generally recite the same features and limitations recited by



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dependent claim 7 of the patent and are therefore rejected under the judicially created doctrine of obviousness-type double patenting for the reasons discussed above with respect to parent claim 1 of the present application. Again, Examiner notes that claim 15 of the present application depends on claim 9, while claim 9 depends on claim 1 of the patent; however, claim 9 of the present application is also not patentably distinct from claim 1 of the patent as discussed above.

6. Claims 8 and 16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 16 of U.S. Patent No. 6,766,114 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because dependent claims 8 and 16 generally recite the same features and limitations recited by dependent claim 16 of the patent and are therefore rejected under the judicially created doctrine of obviousness-type double patenting for the reasons discussed above with respect to parent claim 1 of the present application. Again, Examiner notes that claim 16 of the present application depends on claim 9, while claim 16 of the patent depends on claim 1 of the patent; however, claim 9 of the present application is also not patentably distinct from claim 1 of the patent as discussed above.

7. Claim 21 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 25 of U.S. Patent No. 6,766,114 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because dependent claim 21 of the present application generally recites the same features and limitations recited by dependent claim 25 of the patent and is therefore rejected under the judicially created doctrine of obviousness-type double patenting for the reasons discussed above with respect to parent claim 18 of the present application.



***Allowable Subject Matter***

8. Claim 22 is allowed.
9. Claims 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
10. Claims 1-18 and 21 also contain allowable subject matter but are currently rejected under the judicially created doctrine of obviousness-type double patenting as discussed above
11. The following is a statement of reasons for the indication of allowable subject matter:  
  
Webb (US 6,766,116 B2), Peral et al. (US 2002/0076132 A1) , and Ono et al. (US 2002/0171900 A1) each generally disclose optical communications systems including generating single sideband signals. However, the prior art, including Webb, Peral et al., and Ono et al., does not specifically disclose or fairly teach a system including the combination of all the elements and limitations recited in claims 1-22, particularly wherein headers are conveyed by a single-sideband signal and including an optical notch filter for filtering an optical signal to detect and delete the headers and means for inserting new single-sideband headers into the optical signal.

***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina Y. Leung whose telephone number is 571-272-3023. The examiner can normally be reached on Monday to Friday, 6:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on 571-272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christina Y Leung  
Christina Y Leung  
Patent Examiner  
Art Unit 2633